

AN ORDINANCE 2006 - 01 - 26 - 0128

**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
WITH SOUTHWEST AIRLINES FOR 9,600 SQUARE FEET OF
CARGO SPACE LOCATED IN THE AIR CARGO BUILDING
WEST AT SAN ANTONIO INTERNATIONAL AIRPORT FOR A
TERM OF THREE (3) YEARS COMMENCING NOVEMBER 1,
2005 AND A MONTHLY RENTAL OF \$6,106.13.**

* * * * *

WHEREAS, Southwest Airlines operates air travel and cargo services at the San Antonio International Airport (the "Airport") and is a party to terminal rental and landing fee agreements with the Airport estimated to bring revenues of approximately \$360,000.00 per month; and

WHEREAS, Southwest Airlines has also leased five (5) bays located at the Air Cargo Building West under a lease agreement with the Airport for a term of five (5) years which expired on November 1, 2005; and

WHEREAS, Southwest Airlines has continued to occupy the five (5) bays on a month to month basis while terms of a new lease agreement were being negotiated; and

WHEREAS, new terms have been agreed upon by the City staff and Southwest Airlines for a three (3) year lease agreement of approximately 9,600 square feet of cargo space for a monthly rental of \$6,106.13; and

WHEREAS, it is necessary to authorize the execution of the attached Lease Agreement for use of the cargo space described therein; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

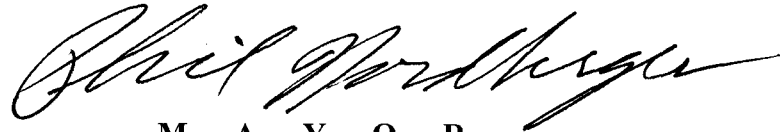
SECTION 1. The City Manager or her designee, is authorized to execute the San Antonio International Airport Lease Agreement, attached hereto as Attachment I, with Southwest Airlines for use of the ground space described herein, at the San Antonio International Airport.

SECTION 2. The proceeds from this Lease Agreement will be deposited into SAP Fund No. 51001000, entitled "Airport Operations," Internal Order 233000000004, entitled "Multi Terminal," and General Ledger Account 4409016, entitled "Aviation Building Rental."

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 26th day of January, 2006.



M A Y O R

PHIL HARDBERGER

ATTEST: 
City Clerk


APPROVED AS TO FORM: 
for City Attorney

Exhibit 1

SAN ANTONIO INTERNATIONAL AIRPORT LEASE FOR LEASE SPACE AT AIR CARGO BUILDING WEST

STATE OF TEXAS }
 }
COUNTY OF BEXAR }

THIS AGREEMENT, (hereinafter called the "Lease Agreement"), entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance No. _____ adopted on _____, ("Lessor"), and **SOUTHWEST AIRLINE COMPANY.**, a Public Corporation, chartered under the laws of Texas, acting by and through its designated officers pursuant to its by-laws or a resolution of its Board of Directors (hereinafter called "Lessee"), **WITNESSETH:**

1. DESCRIPTION OF PREMISES DEMISED

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby demise and lease unto Lessee and Lessee does hereby accept from Lessor 9,600 square feet of cargo building space and improvements to include, Bays 23, 24, 25, 26 and 27 of the Air Cargo Building West, located at 10000 John Saunders Road at the San Antonio International Airport, and more specifically shown in "**Exhibit 2**", which is attached hereto and made a part hereof by reference. ("Leased Premises")

2. RENTAL

2.1 Lessee agrees to pay Lessor as rental, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided.

<u>Leased Premises*</u>	<u>Sq. Ft.</u>	<u>Annual Rate per Sq. Ft.</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
Warehouse Space	8,453	\$7.69	\$65,003.57	\$5,416.97
Office Space	1,147	\$7.21	\$ 8,269.87	\$ 689.16

* All Leased Premises regardless of categorization in this table are contained within Bays cited in Article 1 above.

2.2 Such rentals shall be subject to the adjustments in rental rates contained in Standard Provision 1, hereof.

2.3 All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the Commencement Date and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof. In the event that the term of this Lease Agreement shall commence on a day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments will be prorated for the first or last month as the case may be.

2.4 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the rate of ten percent (10%) per annum commencing thirty (30) days after the date each such payment was due.

2.5 It is the understanding of the parties that all improvements and/or modifications ("Improvements") to any building premises, if any, will be at the sole cost and expense of Lessee. The Improvements will be completed by Lessee only in accordance with plans and specifications to be developed by Lessee's consulting engineer/architect and approved by the Director, in accordance with Standard Provision 5, or as provided in Article 9, Special Provisions.

3. TERM

3.1 The primary term of this Lease Agreement shall be three (3) years. The Lease Agreement shall commence on November 1, 2005 ("Commencement Date"), and shall terminate (unless otherwise earlier terminated under the provisions contained herein) at midnight of the last day of the three (3) year term (October 31, 2008). The Leased Premises will at all time during the term of the Lease Agreement and any extension is subject to the provisions for recapture and/or earlier termination herein contained. In the event the term of this Lease shall commence on a day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments shall be prorated for the first and or last month as the case may be.

4. USE(S) OF PREMISES

4.1 The Premises shall be used for the purposes of handling, processing, loading, unloading, sorting, warehousing and central distribution of air freight and air cargo; the parking and maintenance of ground service equipment and ground vehicles as well as, general office uses related to and necessarily incidental to air freight and cargo operations. Any other use shall require the advance written approval of the Aviation Director.

5. INDEMNIFICATION

5.1 **LESSEE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting

from or related to **LESSEE's** activities under this **LEASE**, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LESSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE's** activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **LESSEE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

5.2 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this section (Section 5), is an **INDEMNITY** extended by **LESSEE** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LESSEE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

6. INSURANCE

6.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to Lessor, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage's, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor shall have no duty to perform under this Lease Agreement until such certificates shall have been delivered to the Lessor, and no officer or employee shall have authority to waive this requirement.

6.2 Lessor reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the Lessor's Risk

Manager based upon changes in statutory law or court decisions, but in no instance will Lessor allow modification whereupon Lessor may incur increased risk.

6.3 Lessee's financial integrity is of interest to Lessor, therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by Lessor, Lessee shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Lessor, in the following types and amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(2) Commercial General Liability Aviation Policy with Hangar-keeper's Liability	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent with an aggregate of not less than \$5,000,000.00
Endorsements to include coverage for the following:	
(A) Premise/Operations	
(B) Independent Contractors	*As applicable
(C) Personal Injury	*As applicable
(D) Contractual Liability	
(E) Broad Form Property Damage to Include Fire and Legal Liability	
(F) Products/ Completed Operations	
(3) Property Insurance for physical damage to the Lessee's improvements and betterments to the leased property	Replacement Cost Coverage or Eighty percent (80%) of Actual Cash Value Coverage
(4) Business Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent.
(5) Plate Glass Coverage for Leased Premises	Replacement Cost Coverage
(6) Above Ground and/or Underground Storage Tank Storage Tank Liability	\$10,000,000.00 per claim.
(7) Aircraft Liability	\$10,000,000.00 per occurrence combined single limit, written on an occurrence form.

6.4 Lessor shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Lessor, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies).

Upon such request buy Lessor, the Lessee shall exercise reasonable efforts to accomplish such changes in policy coverage's, and shall pay the cost thereof.

6.5 Lessee agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

A. Name Lessor and its officers, employees, agents and elected representatives as additional insured (as the interest of each insured may appear), as to all applicable coverage, with the exception of the worker's compensation and employer's liability policy;

B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where Lessor is an additional insured shown on the policy;

C. Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of Lessor.

6.6 Lessee shall notify Lessor in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notice shall be given to the Lessor by Certified Mail at the following addresses:

Aviation Director
CITY OF SAN ANTONIO
9800 Airport Blvd.
San Antonio, Texas 78216-9990

City Clerk's Office
CITY OF SAN ANTONIO
and P.O. Box 839966
City Hall - Second Floor/ 100 Military Plaza
San Antonio, Texas 78283-3966

6.7 The proceeds for any such insurance, paid on account of fire, explosion or other damage shall be used to defray the cost of repairing, restoring or reconstructing said improvements, as necessary.

6.8 It is expressly understood and agreed that all operations of Lessee under this Lease Agreement between Lessor and Lessee shall be covered by such policies of insurance or self insurance as approved by Lessor's Risk Manager and that all personal property placed in the Leased Premises shall be at the sole risk of Lessee. The procuring of policies of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this contract. Lessee's obligations are notwithstanding said policy of insurance, for the full and total amount of and damage, injury or loss caused by or attributable to its activities conducted at or upon the Airport.

7. PERFORMANCE GUARANTEE

7.1 Lessee shall deliver to the Director on or before the execution of this Lease Agreement and shall keep in force throughout the term hereof either an irrevocable letter of credit in favor of Lessor drawn upon a bank satisfactory to Lessor or a surety bond payable to Lessor. The foregoing shall be in form and content satisfactory to Lessor, shall be conditioned on satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and

shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Lessee to the Director on or before the date of the Agreement shall be **THIRTY-SIX THOUSAND EIGHT HUNDRED AND NO/100 (\$36,800.00) DOLLARS**. The amount of the irrevocable letter of credit or surety bond shall be adjusted as necessary so that such amount shall at all times equal at least one-half the total annual rental payable by Lessee to Lessor hereunder.

8. STANDARD PROVISIONS AND COVENANTS

8.1 The Standard Provisions and Covenants set forth in "**Exhibit 1**", attached hereto, are incorporated herein by reference and made a part hereof.

9. SPECIAL PROVISIONS

9.1 Recapture, Relocation, Adjustment, Reconfiguration, Enlargement or Reduction. The parties hereto agree and recognize that lease space in the Air Cargo Building West and associated Ramp Space leased herein, is in high demand, and that Lessor must retain the right to allot such space in a manner deemed by Lessor, in its sole judgment, necessary to maximize the usage of and allotment of such space. Lessee may at any time request additional space to be added to the Leased Premises at the prevailing rental rate for such premises. Approval of such addition will be contingent upon the determination of the Aviation Director in his sole discretion, that suitable space is available. Should such ground space be added, then any such additional leased space, shall be subject to recapture, reallocation, reconfiguration, enlargement or reduction at the prevailing applicable rental rate at the Airport for such space, and shall be subject to the terms and conditions of this Lease. Such recapture, reallocation, reconfiguration, enlargement or reduction shall be at the sole discretion of the Lessor, acting by and through its Aviation Director, as he, in his sole discretion deems necessary. In the event that such recapture, relocation, adjustment, reconfiguration, enlargement or reduction is deemed necessary, Lessor shall provide Lessee thirty (30) days written notice of such need.

9.2 Relocation or Transfer in Event of New Cargo Facility. In the event a new Cargo Facility is constructed or becomes available at San Antonio International Airport, and Lessee is offered the opportunity to relocate or transfer its cargo operations to such new facility, Lessee agrees that within ninety (90) days after being offered the opportunity to relocate or transfer its cargo operations to such new facility it will elect to either: (a) relocate or transfer its cargo operations to such new facility at such rental rates and under such conditions as shall be reasonably established by Lessor; or (b) cease all cargo operations within the Leased Premises and vacate the Leased Premises.

9.3 Relocation or Transfer in Event of New Ground Maintenance Service Equipment Facility. The Parties recognize and agree that the primary purpose of the Air Cargo Building West is for storage and handling of air freight and air mail and that the maintenance of ground service equipment has been permitted therein as an accommodation to Lessee. In the event that Lessee performs maintenance of ground service equipment within the Leased Premises, and a Ground Maintenance Service Equipment Facility is constructed or becomes available at San Antonio International Airport, Lessee agrees that within ninety (90) days after being apprised in writing that such new facility is available for occupancy, it will elect to either: (a) transfer its

ground service equipment maintenance operations to such new facility at such rental rates and under such conditions as shall be reasonably established by Lessor; or (b) cease all ground service equipment maintenance operations within the Leased Premises and vacate the Leased Premises.

9.4 Written Memorialization Required. Should any recapture, relocation, adjustment, reconfiguration, enlargement or reduction, or transfer, be necessary as a result of the events described in Sections 9.1, 9.2, or 9.3 above, a written document shall be executed between Lessee and Lessor, acting by and through its Aviation Director, which reflects the changes as a result of the recapture, relocation, adjustment, reconfiguration, enlargement or reduction of the Leased Premises or Leased Ramp Space, and the terms related thereto. Such writing upon execution thereof by Lessee and the Director, and approval by City Council, shall be filed of record with the City Clerk and shall automatically become a part of this Lease Agreement.

9.5 Certificate of Occupancy. It is the express agreement of the parties that Lessee at Lessee's sole cost and expense will obtain within applicable time limits any required building permits and if Lessee has not provided the City with a Certificate of Occupancy, Lessee shall deliver any such building permits and Certificates of Occupancy therefore to the Director prior to any construction or occupancy of any building premises.

9.6 Data Maintenance and Reports. Lessee shall at all times maintain and within ten (10) days after the last day of each month, Lessee shall submit to the City, by and through its Airport Director, the reports attached hereto and incorporated herein by reference as "**Exhibit 3**" entitled, MONTHLY STATISTICAL DATA REPORT, and "**Exhibit 4**" entitled, MONTHLY LANDED WEIGHT REPORT, as such reports may from time to time be amended, reporting all Revenue and Non-Revenue Landings by Lessee and Lessee's Guest Airline (whether scheduled or non-scheduled) that are handled by Lessee or parked upon the Leased Premises. In the event that a revision in the type and form of statistical data relating to transportation by air of persons, property, cargo and mail is required of Lessor, Lessee agrees, upon Lessor's request to provide such revised statistical data to Lessor, in the form and at the times requested by Lessor. For purposes of this agreement and these reporting requirements the following definitions shall apply:

a. "Revenue Landing" shall mean an aircraft landing by airline, transporter or carrier at Airport in conjunction with a flight for which airline, transporter or carrier makes a charge or from which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landing shall not include any landing of an aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

b. "Guest Airline" shall mean a provider of air transportation or cargo services which is doing business with Lessee, handled by Lessee, or parks upon Lessee's Premises and which does not have in force a written agreement with the City to operate at the Airport.

9.7 If Lessor, acting by and through the Aviation Director, subsequent to the Commencement Date of this Lease Agreement, determines in its sole judgment, that it is

reasonable and necessary to apportion the common area parking space on the street side of the Air Cargo Building West ("Common Parking Area"), and/or to provide a parking attendant to control ingress and egress to the street side of the Air Cargo Building West, the Aviation Director, acting on behalf of Lessor, may apportion such Common Parking Area, and/or to provide for controlled access at Lessee's expense. Lessee agrees that it shall pay additional rental costs and charges allocated to it in the reasonable discretion of the Aviation Director for parking in such Common Parking Area. Such additional rental costs shall be apportioned based on the number of cargo bays leased by Lessee bears to the total number of cargo bays contained in the Air Cargo Building West.

EXECUTED THIS THE _____ **day of** _____ **2005.**

ATTEST: **CITY OF SAN ANTONIO, Lessor**

_____ **By:** _____
City Manager

ATTEST: **SOUTHWEST AIRLINES COMPANY, Lessee**

_____ **By:** _____

Printed Name : _____

Its: _____

Mailing Address

Federal Tax I.D. Number

APPROVED: _____
City Attorney